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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1035.

STATE OF OHIO,
on the relation of
FRANKLIN ANDERSON, *et al.*,
Petitioners,

vs.

MERCEDES COTNER,
Clerk of Cleveland City Council, *et al.*,
Respondents.

BRIEF OF RESPONDENT, MERCEDES COTNER, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

DANIEL J. O'LOUGHLIN,
1857 Union Commerce Building,
Cleveland, Ohio,
Attorney for Respondent,
Mercedes Cotner.

SQUIRE, SANDERS & DEMPSEY,
1857 Union Commerce Building,
Cleveland, Ohio 44115,

PAUL D. WHITE,
Director of Law, City of Cleveland,
204 City Hall,
Cleveland, Ohio 44113,
Of Counsel.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0647

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BRIEF OF RESPONDENT, MERCEDES COTNER, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS.

This action originated in the Supreme Court of Ohio wherein a writ of mandamus was sought. The decision and order of that Court denying the writ, was entered October 6, 1967 and is set forth on page 14a of the appendix to petitioners' brief. The authority for the court's decision and order was *State, ex rel. Rhodes v. Board of Elections of Lake County,* 12 Ohio St. 2d 4 (1967). The opinion in this latter case is predicated upon an interpretation of Section 1f, Article II [1] of the Ohio Constitution and such opinion may be found in full on page 12a of the appendix to petitioners' brief.

[1] The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

II.

PRELIMINARY STATEMENT.

This action in mandamus was filed as the result of the refusal of the respondent, Clerk of Council of the City of Cleveland, Ohio, to process a proposed initiative resolution to mandate the President of the United States to bring all American troops home from Vietnam.

Petitioners are the five members of a committee which circulated and presented to said Clerk of Council the initiative petition in question. Respondent, Mercedes Cotner, is the Clerk of Council of the City of Cleveland and is the individual required by Charter of the City of Cleveland to initially act upon the petition presented by petitioners.

The remaining respondents are members of the Board of Elections of Cuyahoga County, Ohio. A demurrer has been filed in their behalf and sustained by the Supreme Court of Ohio.

For the purposes of this brief, the Citizens' Committee will be referred to as "petitioners," Mercedes Cotner as the "respondent," and "Charter" shall mean the Charter of the City of Cleveland, Ohio. We make no mention of the Board of Elections of Cuyahoga County, since we consider its demurrer to be well taken and also because said Board is not a necessary party for the defense raised by respondent Cotner. All emphasis is that of the respondent unless otherwise indicated.

III.

QUESTION PRESENTED.

Does the Constitution of the State of Ohio or the Charter of the City of Cleveland sanction either the subject matter or the form of the initiative presented to the respondent for processing and did her refusal deprive petitioners of any right protected by Amendment XIV of the Constitution of the United States?

IV.

STATEMENT OF THE CASE.

The facts in this case are not in dispute and the questions presented are readily resolved by judicial interpretation of the meaning of Section 1f, Article II of the Ohio Constitution and Chapter 7, Sections 49 through 62 of the Charter of the City of Cleveland. As previously noted, the text of the Constitutional provision may be found on page 1 of respondents' brief, *supra*. The Charter provisions are fully set forth on pages 2a through 7a of the appendix to petitioners' brief.

The petitioners as duly qualified electors of the City of Cleveland presented an initiative petition to the respondent who under the Charter was charged with the official responsibility of processing a valid initiative petition to ascertain whether or not it contained the signatures of 5,000 duly-qualified electors of the City. By the terms of the Charter, respondent is given ten days to validate the signatures with the Board of Elections of Cuyahoga County, Ohio. If respondent finds that the petition contains sufficient signatures, she certifies the proposed initiative legislation to the Council for its action. The Council must then act on the matter within a specified time sequence. If the proposed legislation is approved, the matter

is terminated. If Council disapproves or amends the legislation in a manner unsatisfactory to petitioners, the Charter establishes a procedure by which petitioners can have the matter placed on the ballot at either a regular or special election.

The initiative petition presented to respondent consisted of some 560 pages and allegedly containing 9,954 signatures which, if valid, would exceed the 5,000 signatures required by the Charter for processing a proper initiative petition.

The initiative proposal was in the form of a resolution which read as follows:

> "Be It Resolved by the People of the City of Cleveland That:
>
> The President of the United States Should Bring All American Troops Home From Vietnam Now So That the Vietnamese People Can Settle Their Own Affairs."

After consulting with legal counsel who informed her that the proposed resolution violated the initiative provisions of both the Ohio Constitution and the City Charter, respondent notified petitioners that their proposed resolution could not be legally processed and offered to return all documents to the petitioners.

Stipulations have been agreed upon to support the authenticity of all pertinent Charter sections referred to in this brief. The parties have also agreed as to the text of the four resolutions relating to non-municipal matters adopted by the City Council during the past twenty years. (See appendix to petitioners' brief, pages 1a to 7a and 9a to 11a.)

As will be brought out in later argument, it is important to recognize that in *each* instance the above-referred to resolutions were introduced and sponsored by

individual members of the City Council. *They were not presented to the Council by way of initiative petition.*

The question of the power of the City Council to adopt such resolutions is *not* before the Court in this case. The only question to be considered is whether or not the electors of the State of Ohio and the City of Cleveland who adopted the applicable constitutional and Charter provisions authorized the use of the initiative with respect to informal enactments in resolution form dealing with matters beyond the scope of municipal control.

V.

ARGUMENT.

REASONS WHY THE WRIT SHOULD BE DENIED.

In order to interject a federal question into this case, petitioners have constructed a "straw man" whose very existence evaporates with an analysis of either Section 1f, Article II of the Ohio Constitution relating to the initiative and referendum powers of a municipality or Sections 49 through 62 of the Charter which set forth the manner in which the people of Cleveland have chosen to exercise this power. Applying either the constitutional or the Charter standard, the petitioner's position is untenable.

1. A proposed initiative resolution relating to the war in Vietnam does not pertain to any matter which a municipality has the power to regulate by legislative action. Therefore, under the Constitution of the State of Ohio, such resolution is not the proper subject for exercise of the initiative.

Section 1f, Article II of the Ohio Constitution is the only provision of that constitution which refers to the municipal initiative. It was interpreted by the Supreme Court

of Ohio in *State, ex rel. Rhodes v. Bd. of Elections, supra,* which case was pending before that court at the same time as the instant matter. The legislation proposed in such case was almost identical in form to resolution proposed by petitioners. In disposing of the matter, the court stated:

> "Section 1f, Article II of the Ohio Constitution provides for municipal initiative and reads as follows:
>
> "The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which *such municipality may* now or hereafter *be authorized by law to control by legislative action;* such powers may be exercised in the manner now or hereafter provided by law." (Emphasis the Court's.)
>
> "The initiative petition in the instant case does not contain any question which a municipality is authorized by law to control by municipal action."

As background reference to Ohio law on the subject, Article II, Section 1f of the Ohio Constitution was adopted at the same time as Sections 3 and 7 of Article XVIII of the Ohio Constitution.[1] Therefore, they should under past decisions of this Court be reconciled in a way that would give meaning and substance to all of the provisions.

In effect Article II, Section 1f says that the people in each municipality reserve the use of the initiative and referendum on matters which municipalities may now or hereafter be authorized by law *to control* by legislation.

---

[1] Article XVIII, § 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Article XVIII, § 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

Section 3 of Article XVIII prescribes that municipalities shall have all powers—*and therefore control*—of local self-government including such police, sanitary and other similar regulations as are not in conflict with the general laws of the state—the fields of incurring debt and levying taxes and assessments are subject to separate constitutional regulations not pertinent to the instant matter.

Section 7 of Article XVIII permits a municipality to adopt a Charter *to control the exercise of the home rule powers* flowing directly from Section 3 of Article XVIII.

The scope of the powers of local self government of a municipality has been established and adhered to since the earliest of the home rule cases in Ohio and it is not respondent's intent to deluge the Court with citations on the subject. The law is explicitly set forth in the early case of *Fitzgerald v. Cleveland,* 88 Ohio St. 338 (1913) where the opinion states at page 344:

> "As to the scope and limitations of the phrase 'local self government,' it is sufficient to say here that the powers referred to are clearly such as involve the exercise of the functions of government, *and they are local in the sense that they relate to the municipal affairs of the particular municipality.*"

In *Village of Beachwood v. Board of Elections,* 167 Ohio St. 369 (1958), The Ohio Supreme Court more recently reiterated its position that the power of local self government granted to municipalities by Section 3 of Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality.

Finally a case quoted extensively by petitioner, both here and in the court below, *State, ex rel. Sharp v. Hitt,* 155 Ohio St. 529 (1951), recognizes the limitations of the initiative in the third paragraph of the syllabus as follows:

"3. The electors of a municipality may by the initiative enact a measure conflicting with or repealing legislation previously passed by the municipal council, *so long as the subject matter of such initiative ordinance is within the powers of the municipality to control by legislative procedure.*"

In harmony with the aforecited limitations is a decision illustrating the absence of municipal control over national issues, *City of Cleveland v. Piskura*, 145 Ohio St. 144 (1945). The first three paragraphs of the syllabus read:

"1. Section 8, Article I of the Constitution of the United States grants to Congress the Exclusive power to declare and levy war.

"2. By virtue of the power granted by Section 8, Article I of the federal Constitution, Congress is vested with exclusive authority to enact all legislation in the interest of the national defense and necessary to the effective prosecution of war.

"3. *Where Congress has enacted, as a war measure, legislation upon a subject matter which is national in character and can be governed only by a uniform system, this state (or its political subdivisions), in the absence of express consent by Congress, is without authority, by way of complement to the legislation of Congress, to prescribe additional regulations which the state may deem auxiliary provisions for the same purpose.*"

Respondent therefore contends that Article II, Section 1f of the Ohio Constitution gives the right of initiative only over those matters which a municipality is authorized by law to control by legislative action. Section 3 of Article XVIII restricts municipal legislative control to those matters relating to local self government. In turn this latter term has been limited by the Ohio Supreme Court as

applying solely to the government and administration of the local affairs of the municipality.

The construction of state law by a state court has been accepted as binding by this Court. *United States v. Burnson,* 339 U. S. 87 (1950).

Since the Ohio Constitution specifically limits the use of the initiative process to matters of local nature, the respondent had no authority to accept an initiative resolution dealing with federal, not local, subject matter and expend local taxpayers' money to process it. Thus, her refusal deprived petitioners of no right granted or protected under the laws of Ohio or the Fourteenth Amendment to the United States Constitution.

2. The people of Cleveland in adopting their Charter have recognized the basic distinction between an ordinance and a resolution and have chosen to limit the application of the initiative procedure to those matters which would be the proper subject for legislation in ordinance form.

The Ohio Supreme Court considered the limitation placed upon the use of the initiative in Section 1f of Article II of the Ohio Constitution to be dispositive of the case and for that reason did not find it necessary to remark upon the limitations on the use of the initiative set forth in the Charter. *With this conclusion respondent agrees.* However, petitioners did refer extensively to both the Charter provisions and sections of the Revised Code of Ohio in their brief; and though respondent considers such arguments to be totally without merit, she is obligated to comment on them.

In analyzing the problem before the Court one must recall that the legislative function of a municipal legislative body is normally performed in one of three ways,

by ordinance, by resolution or by motion. The latter mode is in most instances a part of the body's parliamentary procedure used for the orderly and expeditious conduct of the Council's business and is not pertinent to the instant case.

Of primary importance, however, is the fundamental distinction that exists between an ordinance and a resolution. An ordinance relates to a formal written enactment by a municipal legislative authority in the exercise of governmental power vested by the Constitution and Charter *for the general regulation of its citizens* or other *matters subject to its control* and intended to be of *permanent duration.* By contrast a resolution is an informal written enactment by the legislative authority *disposing of a particular item of business* and *not prescribing any permanent rules of conduct. Wuebker v. Hopkins,* 29 Ohio App. 386 (1928); *State, ex rel. City of Mansfield v. Lowery,* 32 Ohio Ops. 2d 481 (1964); *W. B. Gibson Co. v. W. M. Housing Authority,* 65 Ohio App. 84 (1940); *Campbell v. Cincinnati,* 49 Ohio St. 463 (1892).

An examination of the initiative provisions of the Charter discloses very clearly that the people of the City of Cleveland in enacting these sections chose to limit their application solely to enactment of local regulations of a general and permanent character, namely, ordinances. *Not once* in the 14 sections of the Charter relating to the initiative and referendum is the term resolution used (see appendix to petitioner's brief, pages 2a to 7a). The only legislative reference is to a proposed ordinance. For example:

Section 49 commences with the sentence:

"*Any proposed ordinance* may be submitted to the council by petition signed by at least five thousand (5,000) qualified electors of the city. * * *"

Section 54 states in part:

"When the certificate of the clerk shows the petition to be sufficient, he shall submit *the proposed ordinance* to the council at its next regular meeting and the council shall at once read and refer the same to the appropriate committee, * * *. Provision shall be made for a public hearing on the *proposed ordinance* * * *. Thereafter the committee shall report the *proposed ordinance* to the council with 'its recommendations thereon, not later than sixty days after the date on which the *proposed ordinance* was submitted to the council by the clerk.' "

Section 55 refers to the form on the initiative in this way:

"Upon receiving the *proposed ordinance* * * *. If the council reject the *proposed ordinance* * * *."

Section 56 provides in part:

"When *an ordinance* proposed by a petition is to be submitted to a vote of the electors the committee of the petitioners shall certify that fact and the *proposed ordinance,* * * *."

Section 57 as it pertains to the form of initiative legislation requires:

"Upon receipt of the certified copy of the *proposed ordinance,* * * *. * * * such *proposed ordinance* shall be submitted to a vote of the electors. If no such election is to be held within the time aforesaid, the council may provide for submitting the *proposed ordinance* to the electors. * * *."

Section 58 requires:

"*Proposed ordinances* for repealing any existing *ordinance or ordinances* in whole or part may be submitted to council as provided in the preceding sections *for initiating ordinances. Initiated ordinances* adopted by the electors shall be published and may

be amended or repealed by council as in the case of any other *ordinance.*"

Section 62 reads:

"*Ordinances submitted to council by initiative petition* and passed by council without change, or passed in an amended form and not required to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other *ordinances.*"

Note the contrast with the wording of Sections 32 and 33 of the Charter (Appendix to petitioner's brief, pages 1a and 2a), the pertinent parts of which read:

"§ 32. Legislative Procedure.

"* * * The vote upon the passage of all *ordinances,* and upon the adoption of such *resolutions* as the council by its rules shall prescribe, shall be taken by 'yeas' and 'nays' and entered upon the journal."

"§ 33. Ordinance Enacted.

"*Ordinances and resolutions* shall be introduced in the council only in written or printed form. All *ordinances or resolutions,* except *ordinances* making appropriations, shall be confined to one subject which shall be clearly expressed in the title, except as provided in the next section. *Ordinances* making appropriations shall be confined to the subjects of appropriation. *No ordinance shall be passed until* it has been read on three separate days unless the requirement of reading on three separate days has been dispensed with by a two-thirds vote of all the members of the council. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the council prior to such reading. The enacting clause *of all ordinances passed* by the council shall be 'Be it ordained by the council of the city of Cleveland.' *The enacting clause of all ordinances submitted by the initiative shall be 'Be it ordained by the people of the city of Cleveland.'*"

Respondent could have enumerated numerous other sections of the Charter where the same care was taken in distinguishing between ordinances and resolutions as is evidenced in Sections 32 and 33. However, she believes that these two sections make the required point of distinction especially when one considers the fact that they were adopted by the people of Cleveland at the same time as the previously mentioned sections on the initiative and referendum where reference to resolutions was carefully excluded.

The Court's attention is directed to an Ohio decision directly in point which supports the contention of respondent. In *James, on behalf of City of Columbus v. Ketterer*, 125 Ohio St. 165 (1932) the first paragraph of the syllabus reads:

> "The City Charter of the City of Columbus does not provide for the submission of a resolution by initiative petition, nor for its submission to a referendum."

The above paragraph of the syllabus is elaborated upon in the opinion at pages 168 and 169 as follows:

> "When a city council contemplates an improvement, the introductory legislation is the passage of a resolution of necessity. Defendants insist that the city charter makes ample provision for the initiative and referendum on resolutions. A careful examination of the city charter does not sustain this contention. Sections 36 to 47, inclusive, contain all the provisions relative to the initiative, and Sections 49 to 52, inclusive, are the referendum sections.
>
> "All of these sections are specific. They deal with ordinances and not resolutions. *Defendants insist that the word 'ordinance' as used in the charter is generic and includes 'resolution.' If such were the legislative intent we would have to so hold; but giving to this charter the most liberal construction, considering*

context, subject-matter, and the reason for the law, we fail to find such legislative intent. Rather we find the converse. Resolutions seem to have been studiously avoided. *There is a vast difference between an ordinance and a resolution, and we must assume that the lawmaking body of the city must have had this difference in mind when the city charter was adopted.*

"Counsel on both sides insist that the doctrine of '*Expressio unius est exclusio alterius*' applies in this case, and this court is in complete accord with that contention. Ordinance is expressed; resolution is not; consequently, because of the marked legal distinction between them, *we must conclude that by expressing ordinances, resolutions were excluded,* and that neither the initiative nor referendum as provided for in the charter applies."

Reiteration of the same principle of exclusion may be found in *State, ex rel. Devine v. Hoermle,* 168 Ohio St. 461 (1959) wherein court stated at page 462 of the opinion:

"*Section 5 of the Columbus charter grants the power to fill vacancies to council and to no one else. Applying the doctrine of expressio unius est exclusio alterius, as we did in State, ex rel. Bindas v. Andrish, supra* (165 Ohio St. 441), it is apparent that the charter denies such power to the mayor. It necessarily follows that the statute giving the mayor such power under certain circumstances conflicts with section 5 of the charter."

Finally the answer to petitioners' contention that Sections 731.28 and 731.41 [1] of the Revised Code of the State

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[1] 731.28 Ordinances and measures proposed by initiative petition.

Ordinances and other measures providing for the exercise of any powers of government granted by the constitution or delegated to any municipal corporation, by the general assembly, may be proposed by initiative petition. * * *

(Continued on following page)

of Ohio have application here is found in *Dillon v. City of Cleveland,* 117 Ohio St. 528 (1927), wherein it is stated beginning on page 272 of the opinion:

> "The Cleveland Charter is not of general nature and has local application to the City of Cleveland alone. *The power of charter cities to make charter provisions regulating the manner of the exercise of the referendum does not in any sense depend upon the exemptions stated in Sec. 4227-12 (now Sec. 731.41 R. C.).* That section is merely a legislative recognition of constitutional limitation upon its own power. *The real power of charter cities is referable to Sections 3 and 7 of Article XVIII of the Ohio Constitution.*"

The court elaborated further at page 276 of the opinion as follows:

> "* * * Quite uniformly, and, so far as we have been able to ascertain without exception, the courts of those states having municipal charters with powers of local self-government have declared that a city charter enacted by the voters of a municipality is a *'law'* as much as if it were enacted by the Legislature of the state."

Further refutation of petitioners' argument as to the application of Sections 731.28 and 731.41 of the Revised Code of Ohio is found in Section 1 of the Charter which is entitled "General Powers." Section 1 describes the various and sundry corporation functions of the City of Cleveland and then ends with this clause:

> "and all such powers whether expressed or implied, shall be exercised and enforced in the manner pre-

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(Continued from preceding page)

731.41 Charter municipal corporations.

Sections 731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

scribed in this charter, *or when not prescribed herein, in such manner as shall be approved by ordinance or resolution of Council.*"

Section 2 of the Charter is entitled "Enumeration of Powers Not Exclusive" and provides:

> "The enumeration of particular powers by this charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, the City shall have, and may exercise all other powers which under the constitution and laws of Ohio, it would be competent for this charter to specifically enumerate."

Sections 1 and 2 of the Charter have been in effect since January 1, 1914 and are still in their original form, having withstood the test of several Charter revisions. Thus they must and should be read in *pari materia*. In reading such provisions, it must be remembered that Section 3 of Article XVIII of the Ohio Constitution, not the State Legislature, is the fountain head of municipal power in Ohio. *State, ex rel. Devine v. Hoermle, supra.* The Charter as adopted by the people of Cleveland acts as an instrument for the limitation or distribution of this constitutional power. State statutes governing the initiative are applicable only in those municipalities whose people have elected to exercise a constitutional option of adopting a statutory rather than a charter procedure with respect to the initiative.

Predicated on this foundation, it becomes obvious that the meaning of Sections 1 and 2 of the Charter is *not* as petitioners claim, namely, that where a provision of power is absent, it should be read into the Charter if competent to be so read under state law. What the sections *do* mean is that where an action is not specifically

controlled in the Charter, yet is within the realm of municipal power, it may be exercised in the manner prescribed by ordinance or resolution of Council.

Therefore, petitioner's argument that Section 731.28 of the Revised Code of Ohio, which provides that ordinances *and other measures* relating to municipal power may be proposed by initiative, must be impliedly read into the initiative provisions of the Charter is untenable even without reference to Section 731.41 of the Revised Code which excludes Charter municipalities from the operation of Section 731.28 of the Revised Code.

It follows, therefore, that respondent did not violate any duty required of her by Charter[1] and thereby deprive petitioners of any right protected by Amendment XIV of the United States Constitution by refusing to process an initiative resolution relating to the conduct of the war in Vietnam.

3. The record presents no evidence to substantiate a claim that respondent violated any principle of uniformity protected by Amendment XIV of the United States Constitution.

In order to establish arbitrary discrimination inimical to the rights protected under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, the record must disclose some act on the part of respondent that amounts to violation of an essential principle of practical uniformity.

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[1] § 31. Clerk.

The Council shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall keep the records of the council and perform such other duties as may be required by this charter or by the council. All such officers and employees chosen by the council shall serve during the pleasure thereof.

In this case there is absolutely no evidence that there ever has been a prior attempt to process an initiative resolution of any type in the City of Cleveland, let alone one that refers solely to a question beyond municipal control. Under such circumstance, the initiative resolution presented by petitioners must be considered as a matter of first instance so that there can be no issue of the uniformity of respondent's conduct involved. The only question revolves around an interpretation of Section 1f, Article II of the Ohio Constitution and the various Charter provisions hereinbefore cited. Such interpretation is a matter for the state courts and not a proper basis for review by this Court. *United States v. Burnson (supra).*

The facts here are readily distinguishable from the ones before the Court in *Cox v. Louisiana,* 379 U. S. 536 (1965), cited by petitioners. In the *Cox* case, the evidence clearly established that Baton Rouge authorities had not applied a statute which on its face precluded all street assemblies and parades in a uniform manner. From the record it appeared that such officials permitted or prohibited parades or meetings in completely uncontrolled discretion. Certainly such facts are not analogous to the situation in this case.

Apparently recognizing this distinction, petitioners insert into their reasoning the unsupported proposition that under the Constitution of the State of Ohio and the Charter of the City of Cleveland, legislation originating by way of the initiative extends to the same range of subject matter as legislation originating in the legislative forum. They then contrast the action of respondent with a few previous enactments of city council and attempt to infer discrimination on this basis.

The fallacy of this argument is that the people in enacting both their state Constitution and the Charter of the

City of Cleveland, chose not to grant to the municipal initiative the same legislative prerogatives inherent in the City Council. The constitution limited such initiative to questions which municipalities were authorized to control by law and left any further refinements to the people of a charter municipality. The electors of the City of Cleveland in adopting their Charter further limited the use of the initiative to those matters of a permanent nature which were a proper subject of the ordinance form of legislation. At page 10 of their brief, petitioners concede that such power perhaps exists and with this conclusion respondent agrees.

CONCLUSION.

In our ever evolving society, the complexities of a modern, urban government have been constantly increasing. Apparently the people of the State of Ohio and the City of Cleveland were cognizant of this propensity years ago when they chose to limit the use of the initiative process at the municipal level to those matters relating to local self government which affected the permanent machinery of city government.

Quite properly they recognized that the interjection of national and international questions into municipal elections would tend to obscure the local issues which so intimately affect the daily existence of a community. The people appreciated that a proper forum in which to debate the former matters would be available to them in their Congressional and Presidential elections when the federal policy makers made their accounting to the electorate.

Therefore, respondent respectfully submits that certiorari should be denied for the reason that no legitimate issue involving the application of the Equal Protection

clause of the Fourteenth Amendment is presented by the facts in this case.

DANIEL J. O'LOUGHLIN,
1857 Union Commerce Building,
Cleveland, Ohio,
Attorney for Respondent,
Mercedes Cotner.

SQUIRE, SANDERS & DEMPSEY,
1857 Union Commerce Building,
Cleveland, Ohio 44115,

PAUL D. WHITE,
Director of Law, City of Cleveland,
204 City Hall,
Cleveland, Ohio 44113,
Of Counsel.